



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/620,759 Confirmation No. : 9152
First Named Inventor : Manfred GALLE
Filed : July 17, 2003
TC/A.U. : 1651
Examiner : Ruth A. DAVIS

Docket No. : 029300.52497US
Customer No. : 23911

Title : MICROBIAL ENZYME MIXTURE USEFUL TO TREAT
DIGESTIVE DISORDERS

Petition Under 37 C.F.R. § 1.144

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions for reconsideration and withdrawal of the restriction requirement previously issued in this case.

The present application is pending with current claims 1-18. These claims were subject to a restriction requirement, mailed September 13, 2004. This restriction requirement was made final in an Office Action mailed December 10, 2004.

Applicants respectfully submit that the restriction requirement mailed September 13, 2004 is improper as the alleged grounds on which the restriction was justified are based on a misapplication of MPEP § 806.05(h). The restriction is assertedly justified on grounds that the process of claims 14-18 could be practiced with a product other than the composition of claims 1-13. The Office contends that "materially different products could be used to inhibit maldigestion such as cultures of lactobacillus, bromelain or ginger extract." Applicants respectfully disagree with this conclusion as it applies to the instant claims.

MPEP § 806.05(h) states that restriction may be required if a process of use **as claimed** can be practiced with another materially different product. In the instant application, the Office concludes that other substances can be used for the same general purpose as the claimed process. However, this does not establish that the process as claimed can be practiced with a materially different product. The process "as claimed" is more specific than just inhibition of maldigestion. Thus, the Office's contention that "materially different products could be used to inhibit maldigestion such as cultures of lactobacillus, bromelain or ginger extract" is misplaced with regard to each of the claims of the instant application which require, *inter alia*, lipase from *Rhizopus delemar*. Furthermore, claims 14-16 each ultimately depend from claim 1 and thus by their terms expressly require administration of the composition according to claim 1. Simply put, the process of claims 14-16 requires use of the composition claim 1. The process of claim 14-16 cannot be practiced with another materially different product. The attempted restriction thus fails to satisfy the explicit requirements of MPEP § 806.05(h). Consequently, the requirement for restriction is improper and cannot stand.

Further, the Office Action of September 13, 2004 acknowledges that "process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right" in accordance with the rejoinder provisions of MPEP § 821.04. Thus, if the Examiner allows the claims of Group I, then claims 14-16 could be rejoined. Thus, claims 14-16, at minimum, should be allowed to proceed with the claims of Group I so as to avoid unnecessary withdrawal and rejoinder.

Accordingly, reconsideration and withdrawal of the restriction requirement is respectfully requested with respect to claims 14-18.

Conclusion

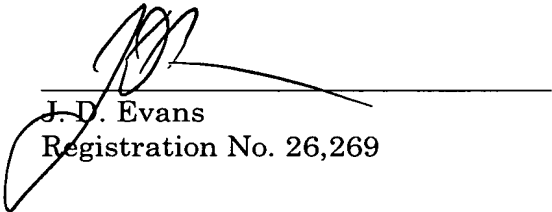
Accordingly, for all of the reasons noted above, the requirement for restriction is improper and should be withdrawn.

Application No. 10/620,759
Petition dated September 6, 2005

If there are any questions regarding this Petition or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

September 6, 2005

Respectfully submitted,



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